IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

Mary Short, Individually and as Administratrix of the Estate of Thomas L. Short,	)	**Civil Action No.: 5:04cv00043**
Plaintiff,	)	
v.	)	**MEMORANDUM OPINION**
Sheriff Daniel T. McEathron, et al.,	)	**By: Samuel G. Wilson**
	)	**United States District Judge**
Defendants.	)	

Mary Short, individually and as representative of the estate of her husband, Thomas Lee Short, filed this action pursuant to 42 U.S.C. § 1983, following her husband's suicide while he was a detainee at the Warren County jail. She brought this action against Warren County Sheriff Daniel T. McEathron and seven deputy sheriffs assigned to the Warren County jail, alleging that their deliberate indifference led to her husband's suicide.[1] The defendants have moved for dismissal under Rule 12(b)(6) on grounds that Mrs. Short's allegations do not state a cognizable claim under § 1983. Drawing all reasonable inferences in favor of Mrs. Short, the court finds that her complaint raises a cognizable claim and therefore denies defendants' motion to dismiss.

I.

At 9:30 on the night of January 11, 2004, Mary Short received a phone call from her husband,

[1]Because the parties have agreed to dismiss Sheriff McEathron as a defendant, the court will not address defendants' arguments as to the claims against him.

who was threatening to kill himself. Mrs. Short contacted both the Front Royal Police Department and the Warren County Sheriff's department, informing them that her husband was planning to commit suicide. The Shorts' daughter, Linda Good, found her father at the Blue Ridge Motel in Front Royal, Virginia, so drunk that he could not walk. Mr. Short called his wife again at 4:30 a.m. and repeated his plan to kill himself. The next day, Mrs. Short swore out a criminal complaint against Mr. Short, alleging that under an existing protective order, Mr. Short was not to consume alcohol. The Warren County magistrate found that Mr. Short was in violation of the protective order, issued a warrant for his arrest, and contacted the Front Royal Police Department, advising them that Mr. Short was intoxicated and had been threatening to kill himself.

Mr. Short was arrested and taken to the Warren County jail, where he was ordered held without bond. Defendants Deputy William Smoot, Deputy Michael Beatty, Deputy Troy Oakes, and Deputy George Lewis were on duty at the jail. The arresting officer informed the deputies that Mr. Short was drunk and that he had been calling his wife the previous night threatening to kill himself. Nevertheless, according to Mrs. Short's complaint, the deputies did not follow the Warren County jail's procedures for treatment of potentially suicidal inmates. He was not stripped of his clothing and shoelaces and was not placed on "suicide watch," during which jail staff would check on him every fifteen minutes. Nor did the deputies on duty request a mental health evaluation.

Several hours after Mr. Short was placed in his cell, he began to exhibit aggressive behavior, slamming his shoes into the bars and sink. His conduct was observable by video on the jail's monitor, but no member of the jail staff responded. Around 7:00 p.m., the deputies on duty were relieved by defendants Deputy Harry Ferguson, Deputy Kurt Kensy, and Deputy Jeremy Seal. While these

deputies watched the jail monitors between 7:00 and 9:00 p.m., none made a check of Mr. Short's cell in person during that time. Between 7:00 and 7:30 p.m., Mr. Short, in full view of the cameras, tied his shoelaces together, put the laces around his neck, and conducted a series of "tests" on the cell bars. He tied the makeshift noose around his neck five times and climbed the cell bars to test his weight at least three times, before finally hanging himself. Despite the fact that Mr. Short's actions were observable on the jail monitors and that inmates in adjacent cells repeatedly tried to get the deputies' attention, Mr. Short's body was not cut down until 9:17 p.m., approximately one hour and forty minutes after his suicide.

II.

The defendants have moved to dismiss this action pursuant to Rule 12(b)(6), arguing that Mrs. Short's allegations fail to state a claim under § 1983. The court finds that the complaint is sufficient to state a claim of deliberate indifference as to the sheriff's deputies.

A Rule 12(b)(6) motion "should be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999). When a Rule 12(b)(6) motion is "testing the sufficiency of a civil rights complaint, 'we must be especially solicitous of the wrongs alleged' and 'must not dismiss the complaint unless it appears to a certainty that the plaintiff would not be entitled to relief under any legal theory which might plausibly be suggested by the facts alleged.'" Id. (quoting Harrison v. United States Postal Serv., 840 F.2d 1149, 1152 (4th Cir. 1988)). Taking the facts as alleged in the complaint as true, if it is possible to hypothesize a circumstance under

which the plaintiff would be entitled to relief, then dismissal under Rule 12(b)(6) is inappropriate.

The court finds that Mrs. Short's complaint is sufficient to state a claim of deliberate indifference. A prison official may be held liable if "he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, 511 U.S. 825, 848 (1994). If "the circumstances suggest that the [defendant] had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the [defendant] had actual knowledge of the risk." Id. at 842-43. Knowledge of a risk of harm may also be shown by circumstantial evidence, that is, "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." Farmer, 511 U.S. at 842.

The complaint alleges that the arresting officer told Deputies Beatty, Oakes, Lewis, and Smoot that Mr. Short was drunk and threatening suicide. In addition, the complaint alleges that Deputies Ferguson, Seal, and Kensey watched the surveillance monitors between 7:00 and 9:00, and that Mr. Short engaged in suspicious activity for thirty minutes before he hung himself, in full view of surveillance cameras. The complaint, therefore, sufficiently alleges that the deputies knew of the risk that Mr. Short would kill himself.

Further, Mrs. Short's complaint sufficiently alleges that the deputies deliberately disregarded the risk of harm to Mr. Short. Deliberate disregard of a risk "requires nothing more than an act (or omission) of indifference to a serious risk that is voluntary, not accidental." Farmer, 511 U.S. at 840. The complaint alleges that Deputies Beatty, Oakes, Lewis, and Smoot failed to follow jail procedures for suicidal inmates. The complaint further alleges that Deputies Ferguson, Seal, and Kensy also failed

to provide adequate treatment, evaluation, and protection for Mr. Short. The court finds these allegations sufficient to sustain a claim of deliberate indifference. See e.g., Gordon v. Kidd, et al., 971 F.2d 1087, 1095 (4th Cir. 1992) ("When facts have been pled which if proven, would demonstrate that the prison officials actually knew of the suicidal tendencies of a particular prisoner, and ignored their responsibility to take reasonable precautions, the complaint has survived dismissal.")

Under the liberal pleading requirements of Rule 8, the plaintiff is not required to prove her factual and legal allegations, but need only show that relief is possible. Defendants' arguments as to the undisputed facts would, therefore, be more properly addressed in a motion for summary judgment.[2]

III.

For the reasons stated, the court finds that plaintiff's complaint is sufficient to state a claim under 42 U.S.C. § 1983, and defendants' motion to dismiss is denied.

ENTER: This ___ day of November, 2004.

_____
UNITED STATES DISTRICT JUDGE

[2]The defendants also argue that plaintiff's claim is barred by the "illegal act" defense. The court finds that where the plaintiff has alleged sufficient facts to state a claim of deliberate indifference under § 1983, this defense is not an automatic bar to recovery. The § 1983 cases cited by the defendants' in support of their argument do not address deliberate indifference, and therefore are not controlling.

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v.	)	**ORDER**
Sheriff Daniel T. McEathron, et al.,	)	**By: Samuel G. Wilson**
	)	**United States District Judge**
Defendants.	)	

In accordance with the memorandum opinion entered on this day, it is hereby **ORDERED** and **ADJUDGED** that defendants' motion to dismiss is **DENIED**.

ENTER: This _____ day of November, 2004.

_____
UNITED STATES DISTRICT JUDGE